

**Exhibit A**

Transcript from hearing held on June 19, 2019

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555-scc

4 - - - - - x

5 In the Matter of:

6 LEHMAN BROTHERS HOLDINGS INC.,

7 Debtor.

8 - - - - - x

9 Adv. Case No. 16-01019-scc

10 - - - - - x

11 LEHMAN BROTHERS HOLDINGS INC.,

12 Plaintiff,

13 v.

14 1ST ADVANTAGE MORTGAGE, L.L.C., et al.,

15 Defendants.

16 - - - - - x

17 Adv. Case No.

18 - - - - - x

19 LEHMAN BROTHERS HOLDINGS INC.,

20 Plaintiff,

21 v.

22 GOLDWATER BANK, N.A., as SUCCESSOR TO COMMUNITY BANKS OF

23 COLORADO,

24 Defendant.

25 - - - - - x

1 Adv. Case No. 18-01825-scc

2 - - - - - x

3 LEHMAN BROTHERS HOLDINGS INC.,

4 Plaintiff,

5 v.

6 SUBURBAN MORTGAGE, INC.,

7 Defendant.

8 - - - - - x

9 Adv. Case No. 18-01839-scc

10 - - - - - x

11 LEHMAN BROTHERS HOLDINGS INC.,

12 Plaintiff,

13 v.

14 IMORTGAGE.COM, INC., et al.,

15 Defendants.

16 - - - - - x

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1 Adv. Case No. 18-01842-scc

2 - - - - - x

3 LEHMAN BROTHERS HOLDINGS INC.,

4 Plaintiff,

5 v.

6 PMAC LENDING SERVICES INC., individually and as successor by

7 merger to PMC Bancorp, f/k/a Professional Mortgage Corp.,

8 and as successor by merger to Reliant Mortgage Company, LLC,

9 PMC BANCORP, f/k/a Professional Mortgage Corp.,

10 individually, Reliant Mortgage Company, LLC, individually,

11 Defendants.

12 - - - - - x

13 Adv. Case No. 19-01018-scc

14 - - - - - x

15 LEHMAN BROTHERS HOLDINGS INC.,

16 Plaintiff,

17 v.

18 NETWORK FUNDING L.P., et al.,

19 Defendants.

20 - - - - - x

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1 Adv. Case No. 19-01020-scc

2 - - - - - x

3 LEHMAN BROTHERS HOLDINGS INC.,

4 Plaintiff,

5 v.

6 THE CROSSFIRE FINANCIAL NETWORK, INC.,

7 Defendant.

8 - - - - - x

9

10 United States Bankruptcy Court

11 One Bowling Green

12 New York, NY 10004

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14 June 19, 2019

15 10:11 AM

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21 B E F O R E :

22 HON SHELLEY C. CHAPMAN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: TENILLE

1 HEARING re Adversary proceeding: 16-01019-scc Lehman  
2 Brothers Holdings Inc. v. 1st Advantage Mortgage, L.L.C. et  
3 al Pre-Motion Conference

4  
5 HEARING re Adversary proceeding: 18-01754-scc Lehman  
6 Brothers Holdings Inc. v. Goldwater Bank, N.A., as  
7 successor to Community Ba Pre-Motion Conference

8  
9 HEARING re Adversary proceeding: 18-01825-scc Lehman  
10 Brothers Holdings Inc. v. SUBURBAN MORTGAGE, INC.  
11 Pre-Motion Conference

12  
13 HEARING re Adversary proceeding: 18-01839-scc Lehman  
14 Brothers Holdings Inc. v. Imortgage.com, Inc. et al  
15 Pre-Motion Conference

16  
17 HEARING re Adversary proceeding: 18-01842-scc Lehman  
18 Brothers Holdings Inc. v. PMAC Lending Services, Inc.,  
19 individually and as s Pre-Motion Conference

20  
21 HEARING re Adversary proceeding: 19-01018-scc Lehman  
22 Brothers Holdings Inc. v. Network Funding L.P. et al  
23 Pre-Motion Conference

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1 HEARING re Adversary proceeding: 19-01020-scc Lehman

2 Brothers Holdings Inc. v. The Crossfire Financial Network

3 Inc. Pre-Motion Conference

4  
5 HEARING re 08-13555-scc Lehman Brothers Holdings Inc.

6 Doc #59614 Motion for an Order Enforcing the Modified Third

7 Amended Joint Chapter 11 Plan of Lehman Brothers Holdings

8 Inc. and its Affiliated Debtors for Purposes of

9 Distributions filed by Rex Wu

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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1 ALSO PRESENT TELEPHONICALLY:

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3 TRACY HENDERSON

4 AARON MALO

5 MICHAEL KIEVAL

6 JASON SANJANA

7 ENZA BODERONE

8 KENNETH DUVALL

9 PHILIP STEIN

10 CHRISTOPHER LAVOY

11 AMJAD KHAN

12 REBECCA RODRIGUEZ

13 LILIT ASADOURIAN

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P R O C E E D I N G S

THE COURT: Who's here who has a letter filed on the docket? I've got LoanDepot, Network Funding.

MR. LAVOY: Yes.

THE COURT: Who's here representing LoanDepot?

MR. LAVOY: Good morning, Your Honor. Chris LaVoy on behalf of LoanDepot.

THE COURT: Okay. All right. So let's look at that one first. And Mr. LaVoy, you sent a letter dated May 13th that asks to bring a motion to dismiss with respect to successor liability. Plan administrator says that they have sufficiently alleged successor liability. So have you folks spoken to each other?

MR. LAVOY: We have not, Your Honor.

MR. KUEHN: Not since the letter, Your Honor.

THE COURT: Okay. So why don't -- why don't we hear from the plan administrator your -- to the extent that you have kind of a granular description of what's the basis of your belief that there is successor liability here?

MR. KUEHN: Certainly, Your Honor. LoanDepot's arguments primarily are based on the claims that the Delaware Supreme Court hasn't recognized mere continuation and that we haven't alleged sufficient fraudulent intent to show a de facto merger.

THE COURT: Mh hmm.

1 MR. KUEHN: However, while the Delaware Supreme  
2 Court has not explicitly recognized a mere continuation, the  
3 lower courts have, and there's no indication that the  
4 Supreme Court will not.

5 Secondly, Delaware law, as we set out in our  
6 letter, does not require fraudulent intent to show a de  
7 facto merger. And then if you look at the factual  
8 descriptions in our complaint, which are found at Paragraphs  
9 42 to 53, they're extensive. Not to say that the  
10 allegations in our complaint are necessarily sufficient to  
11 prove --

12 THE COURT: Understood.

13 MR. KUEHN: -- these elements, but there's  
14 certainly enough to survive a motion to dismiss. It just  
15 doesn't seem like a good use of our time to be briefing this  
16 now before discovery.

17 THE COURT: Okay. Mr. LaVoy?

18 MR. LAVOY: To clarify, Your Honor, with respect  
19 to the de facto merger theory, one element of our argument  
20 is that the fraud component has not been adequately pled.  
21 And the caselaw is -- some cases appear to require a fraud  
22 allegation or a fraud component to establish de facto  
23 merger. But we don't believe other elements necessary to  
24 establish de facto merger inadequately alleged in the  
25 complaint, so it's not isolated to the fraud element.

1           And then with respect to the companion mere  
2           continuation theory for successor liability, as opposing  
3           counsel pointed out, there have been open questions  
4           regarding whether the Delaware Supreme Court would recognize  
5           this theory of successor liability. At least one court has  
6           held that it would not, and we believe it would be  
7           beneficial to have this threshold issue resolved at the  
8           outset to determine whether there's any mere continuation  
9           theory to proceed with for LBHI.

10           THE COURT: Okay. Thank you, Mr. LaVoy. How many  
11           loans are at issue here? Do you know?

12           MR. KUEHN: I don't know offhand.

13           MR. LAVOY: I'm --

14           THE COURT: Mr. LaVoy, do you know?

15           MR. LAVOY: I didn't hear you. I apologize, Your  
16           Honor.

17           THE COURT: I'm sorry?

18           MR. KUEHN: He didn't hear you, Your Honor.

19           MR. LAVOY: I didn't hear.

20           THE COURT: My question is do you know how many  
21           loans are at issue here, your client's loans?

22           MR. LAVOY: I do not -- I do not know the exact --  
23           I do not know the exact number. I believe the value of the  
24           numerous loans on the RMBS side is in the 20- to 30-million  
25           range.

1 MR. KUEHN: That's correct, Your Honor. It's 27.6  
2 million.

3 THE COURT: Okay.

4 MR. KUEHN: Is the principle.

5 THE COURT: All right. Thank you. All right.

6 Well, based on what you've said, you obviously don't agree.

7 I will -- I will simply say that there hasn't been a very  
8 good track record which -- with respect to these motions,  
9 but I'll give you the ability to file it.

10 So let's go through the other ones, and I want to  
11 see if there are any efficiencies that we -- can be gained  
12 to the extent that others who've made this request ought to  
13 be on the same timeframe. So thank you, Mr. LaVoy.

14 The next letter is on behalf of Network Funding.  
15 Mr. Kieval?

16 MR. KIEVAL: Yes, Your Honor. This is -- yes,  
17 Your Honor. Michael Kieval on behalf of (indiscernible)  
18 defendants.

19 THE COURT: Okay. All right. So this is a --  
20 this is a different basis. This has to do with whether or  
21 not a release contained in a prior settlement is applicable  
22 here such that it would preclude the claims that LBHI has  
23 filed. And Lehman points out that the settlement that  
24 you're talking about relates to different loans than the  
25 settlement -- than what was at issue in the previous

1 settlement, and therefore the release does not apply.

2 MR. KUEHN: Yes, Your Honor. Not only does it  
3 relate to different loans, but it precedes by almost a  
4 decade the estimation here in the settlement. So it simply  
5 doesn't apply.

6 THE COURT: Well, I don't know that those two  
7 things are necessarily true. In other words, the  
8 settlement, as we all know, under my view of the law -- and  
9 the settlement gave rise to indemnification claims.

10 MR. KUEHN: Correct.

11 THE COURT: Okay. So whether or not a prior  
12 settlement could borrow those claims is a separate question  
13 from whether or not these are different loans.

14 MR. KUEHN: Correct, but it's both the different  
15 loans, the language of the settlement agreement, and the  
16 time the settlement agreement was entered.

17 THE COURT: Okay. Well, all -- okay. I was just  
18 taking issue with that narrow statement that you made.

19 So Mr. Kieval, have you had a chance to consider  
20 what the plan administrator has pointed out?

21 MR. KIEVAL: Yes, and we've discussed this with  
22 them previously, and there are a few issues. First of all,  
23 we believe that the language of the release itself does  
24 cover it. There are two parts of the release. There's a  
25 release of unknown claims arising from events that gave rise

1 to the litigation, so that's -- we do believe that it comes  
2 under that.

3 But broader than that, the issue here is this was  
4 a settlement that merged into a judgment under Texas law,  
5 and the Texas law treats preclusion fairly broadly in these  
6 contexts. And so we would argue that there is a -- that to  
7 the extent that -- basically that there's a subject matter  
8 -- when the judgment on dismissing their claims based on the  
9 settlement was entered, that it had a much broader effect  
10 than the language of the release because it's not simply  
11 about the release.

12 But it goes on to -- there's another issue, and  
13 one that the administration doesn't address at all in their  
14 letter, which is the issue that there is a merger clause and  
15 that the merger clause supersedes all previous agreements.  
16 And therefore, to the extent that they're suing under the  
17 same agreement, those agreements no longer exist and are no  
18 longer binding on my client.

19 THE COURT: Okay. Well, I'm not going to do the  
20 merits on this basis. I'm not particular persuaded by, at  
21 this point, by any argument that based on Texas law the  
22 analysis would be any different. Either the release relates  
23 to this and it covers it or it doesn't.

24 I think that I've got some selective quoting of  
25 the documents back and forth to me, and you're just going to

1 have to brief it.

2 So we're going to -- at the conclusion of this  
3 morning session, we'll come up with a briefing schedule.

4 All right?

5 MR. KIEVAL: Thank you, Your Honor.

6 THE COURT: Okay. Okay. The next letter is PMAC  
7 Lending Services.

8 MR. KHAN: Yes. Good morning, Your Honor. This  
9 is Amjad Khan representing PMAC and then also PMC Bancorp  
10 and Reliant --

11 THE COURT: Okay.

12 MR. KHAN: -- for which you received letters as  
13 well.

14 THE COURT: Okay. So your letter raises both the  
15 statute of limitations issue and the successor liability  
16 issue.

17 MR. KUEHN: Yes, Your Honor.

18 MR. KHAN: Yes, Your Honor.

19 THE COURT: So Mr. Khan, are you aware of the  
20 extensive procedural history that exists with respect to the  
21 statute of limitations issue in this court and elsewhere?

22 MR. KHAN: Yes, I'm keenly aware of it, Your  
23 Honor, and I am also aware of Your Honor's ruling in the  
24 Universal Mortgage case. I -- but I do believe that the  
25 facts of our case are unique in several ways. And if Your

1 Honor can indulge me for a minute, I can explain why.

2 THE COURT: No, I don't -- I'm not going to  
3 indulge you for a minute. If you --

4 MR. KHAN: Well, I -- what I mean to say is that  
5 --

6 THE COURT: Excuse me.

7 MR. KHAN: -- there's a judgment --

8 THE COURT: Excuse me.

9 MR. KHAN: -- in our case.

10 THE COURT: Excuse me. To the extent that you  
11 believe that you will be successful in convincing me that  
12 the claims are time barred, you can make a motion. I am not  
13 -- I am telling you, and I've said it repeatedly, I'm not  
14 going to, from scratch, redo what I have done multiple  
15 times. So you can make your motion and I'll rule on it, but  
16 the ruling may simply say, for the reasons stated in my  
17 previous ruling, and see also the statements made by the  
18 district court in declining the request to appeal my  
19 previous ruling.

20 So, you know, you're entitled to due process.  
21 You're entitled to establish why -- you know, at least to  
22 have some ruling from this court as to whether or not that  
23 statute of limitations ruling applies to you.

24 MR. KHAN: Understood, Your Honor.

25 THE COURT: But you ought to go through it very

1 carefully because there continues to be a disconnect in how  
2 folks are reading the Tenth Circuit decision and the way  
3 that I have interpreted it, which I'm not going to be  
4 dialing back.

5 So what you're going to have to do though is you're  
6 going to have to make two separate motions. You're going to  
7 have to make a motion with respect to the Tenth Circuit  
8 theory, so to speak, and then a separate motion on the  
9 successor liability.

10 MR. KHAN: Understood, Your Honor. May I  
11 respectfully raise one procedural point which I think is  
12 critical that was raised by Lehman? And this is an  
13 important clarification.

14 In Your Honor's amended CMO, Your Honor can see  
15 that in Section 2-I, Your Honor permitted threshold motions.  
16 Any defendant would reserve with a supplemental or  
17 additional complaint to any threshold motion, and so Lehman  
18 argued that 2-E governs the situation for our defendant, but  
19 I want to make it very clear that we are listed in Exhibit  
20 4, all of our clients. And so the letter brief that was  
21 actually filed -- letter response that was filed by Lehman  
22 with respect to the letters that we raised on May 13th are  
23 not actually permitted under Section 2-I.

24 And I raise it only because this is an important  
25 procedural point that I think it governs LoanDepot and

1 Reliant, PMAC, and PMC where Your Honor permitted any  
2 threshold motion. And Lehman seems to think that we are  
3 governed by 2-E, which is a supplemental brief process.

4 THE COURT: Okay. It's really -- it's not worth  
5 talking about. You're going to make your motion.

6 MR. KHAN: Yes. I --

7 THE COURT: Right?

8 MR. KHAN: -- just wanted to point that out.

9 That's fine, Your Honor. Yeah.

10 THE COURT: What -- am I missing something?

11 MR. KHAN: No.

12 THE COURT: Okay. So you're going to make your  
13 motion, and we'll -- when we get to the end, we'll figure  
14 out a way to establish a briefing schedule. If not today,  
15 then in some relatively coordinated fashion.

16 Okay. So Mr. Khan, that -- we've covered your  
17 other letter as well; have we not?

18 MR. KHAN: You have, Your Honor, with your -- with  
19 your observations.

20 THE COURT: Okay.

21 MR. KHAN: I think that covers both letters.

22 THE COURT: Okay.

23 MR. KHAN: Thank you.

24 THE COURT: All right. Just to make that clear,  
25 so that's also with respect to the second letter that you

1 filed. Okay.

2 So just for the record, that was PMAC Lending  
3 Services and PMC Bancorp. Okay.

4 So that brings us to Crossfire Financial Network.  
5 Is anyone here --

6 MS. RODRIGUEZ: Yes.

7 THE COURT: Yes.

8 MS. RODRIGUEZ: Good morning, Judge. Rebecca  
9 Rodriguez from GrayRobinson on behalf of Crossfire Financial  
10 Network.

11 THE COURT: Okay. All right. So Ms. Rodriguez,  
12 you have two different matters that you raise. One is a  
13 release issue, and one is a motion to transfer venue.

14 MS. RODRIGUEZ: Correct, Judge.

15 THE COURT: Okay. Are you -- are -- have you  
16 familiarized yourself with the decisions that were rendered  
17 within other -- in many other cases requesting a venue  
18 transfer?

19 MS. RODRIGUEZ: Yes, Your Honor. I've researched  
20 your opinions in prior adversary proceedings related to this  
21 bankruptcy on that issue.

22 THE COURT: And you think it would be worthwhile  
23 to move the transfer venue?

24 MS. RODRIGUEZ: Well, for a limited reason,  
25 potentially yes, Judge. There might be a benefit to

1 extension here. So the Florida judge who presided over one  
2 of the Crossfire cases with Aurora Bank could interpret and  
3 determine the scope and application of the settlement  
4 agreement because Crossfire and Aurora settled three  
5 lawsuits. And the settlement agreement between those two  
6 entities states that it's to be interpreted under Florida  
7 law.

8 So for that very limited reason, I thought there  
9 might be a potential benefit to having this matter  
10 transferred back to the Florida judge for the Florida judge  
11 to determine whether that settlement agreement under Florida  
12 law should extend to subsequent matters based on the  
13 language of the release.

14 MR. KUEHN: Your Honor, we disagree, obviously.  
15 First of all, as to the merits of the settlement agreement  
16 itself, as we pointed out in the letter response,  
17 Crossfire's letter omitted key language from the release  
18 which limits the extent of the release to matters that are  
19 relating to or arising from the judgments. Those judgments  
20 relate to individual loans that are not the loans at issue  
21 in the adversary proceeding, clearly unrelated. We don't  
22 think there's any --

23 THE COURT: All right. So hold on. So, Ms.  
24 Rodriguez, do you have a response to that?

25 MS. RODRIGUEZ: Yes, Judge. The release language

1 under Florida law applies to subsequent matters between the  
2 parties and, if I can pull it, the language itself --

3 THE COURT: So if there were -- if there were a  
4 slip-and-fall claim, it -- your view of the prior release  
5 was that it would cover it and preclude that?

6 MS. RODRIGUEZ: No. If it was related to the loan  
7 purchase agreement, which was the subject matter of those  
8 lawsuits, then yes.

9 MR. KUEHN: If it had --

10 MS. RODRIGUEZ: Aurora sued Crossfire in Colorado  
11 and in Florida alleging that they're the successor to the  
12 loan purchase agreement that's now at issue in this lawsuit.  
13 And when the parties negotiated a resolution of those suits,  
14 it included this very broad release language, which contains  
15 language like whether known or unknown, and it applies to --  
16 it applies to any successors or assigned to party's  
17 hereafter can, shall, or may have (indiscernible) equity.  
18 And it's very broad language. And because that settlement  
19 agreement has to be interpreted under Florida law, because  
20 that's what the parties agreed to, that language is very  
21 favorable to Crossfire in this instance, particularly  
22 because three of the five loans --

23 THE COURT: Okay. Ms. Rodriguez, hold -- Ms. --  
24 please. I'm not interested in a full argument on the  
25 merits. Okay? I understand what your plan is. All right?

1 Okay.

2 I don't see any way around having to brief this.

3 I have yet to grant a motion for a change of venue. I would  
4 encourage you to think carefully about whether or not you  
5 think that that's worth doing. I can interpret Florida law  
6 as well as anyone else, and I really would like to have this  
7 proceed as efficiently as possible.

8 But on the language -- on the motion with respect  
9 to the release, we're just going to have to have full  
10 briefing because I can't -- I can't piecemeal determine  
11 whether or not one or the other of you is giving me the  
12 correct view of the release. I mean, I know that these  
13 releases refer to LPAs, whether or not it says what you say,  
14 Ms. Rodriguez, or whether it says what the plan  
15 administrator says. We'll just have to determine.

16 How many loans are at issue on this one; do we  
17 know? Or notional value?

18 MR. KUEHN: (Indiscernible) tell you quickly.

19 MS. RODRIGUEZ: It's five loans, and it's a -- the  
20 payment in total is a little over \$1 million.

21 THE COURT: Okay. All right. If you would stand  
22 by, Ms. Rodriguez, for us to have the scheduling discussion.  
23 We're almost done.

24 MS. RODRIGUEZ: Thank you, Judge. And I will  
25 (indiscernible) my client on your guidance and

1 recommendations on the venue issue. I will discuss it.

2 THE COURT: Okay. I wouldn't characterize it as  
3 recommendation so much as an observation. All right?

4 MS. RODRIGUEZ: Understood. Thank you, Judge.

5 THE COURT: Thank you.

6 All right. So that brings us up to Goldwater Bank  
7 as successor to Community Banks of Colorado.

8 MS. PETRAKOV: Good morning.

9 THE COURT: Hello. Thank you for being here in  
10 person.

11 MS. PETRAKOV: I'm Albena Petrakov, Offit Kurman,  
12 on behalf of Goldwater.

13 THE COURT: Yes. So this is a successor liability  
14 issue. You state in your letter, Ms. Petrakov, that this  
15 lack of specific allegations reflects Plaintiff's failure to  
16 engage in any reasonable investigation of facts. Had LBHI  
17 done so, it would have discovered that Goldwater bank is not  
18 a successor to Community Banks of Colorado. Community Bank  
19 entered receivership. A small subset of assets was  
20 transferred, etc.

21 So have you had a chance to speak to each other?

22 MS. PETRAKOV: We had a brief chance to talk with  
23 Mr. (indiscernible), and I have provided some documentation  
24 to show that Affiliated Financial Group LLC, which is a --

25 THE COURT: Mh hmm.

1 MS. PETRAKOV: -- (indiscernible) owned subsidiary  
2 of Goldwater Bank, purchased a small subset of assets in  
3 2009, before the receivership.

4 THE COURT: Mh hmm.

5 MS. PETRAKOV: And we agreed to disagree. We  
6 haven't reached any common solution. I don't think that the  
7 mere -- the de facto merger or continuation exceptions apply  
8 to the extent CBC continues to exist after the purchase. I  
9 don't think there could be a de facto merger under Colorado  
10 law, which is going to be the active law.

11 And with respect to the continuation, under  
12 Colorado law, to establish continuation, you need to prove  
13 continuation of the company or the entity, meaning same  
14 shareholder interests or officers and directors, not  
15 continuation of the business operations.

16 As (indiscernible), we think that neither  
17 Goldwater Bank nor the subsidiary belong in this case.

18 THE COURT: Okay. Thank you. This seem -- this  
19 one seems a little different than the other ones.

20 MR. KUEHN: I -- it is, but it flags the same  
21 issue that we face that we face in many of the successor  
22 claims, and that is that the documents, facts, the  
23 information is primarily in the hands of the defendants. We  
24 can do our diligence. We can search the public record. But  
25 unless it's a, you know, a publicly traded company, unless

1 it files with the SEC, there's limited diligence there.  
2 There's limited information that we can get from the public  
3 record. And --

4 THE COURT: But in this situation -- I don't  
5 disagree with that, but in this situation, Ms. Petrakov  
6 seems to have supplied you, just in this letter, with a  
7 bunch of facts and seems to me to be willing to give you  
8 more facts.

9 MR. KUEHN: If we can -- pardon me.

10 THE COURT: Yeah.

11 MR. KUEHN: If we can engage in discovery before  
12 the motion is filed, that would make sense. We're happy to  
13 address the motion once --

14 THE COURT: Well, I don't want to use the word  
15 "discovery." I would like to use the word "diligence."

16 MR. KUEHN: Diligence.

17 THE COURT: I don't want to -- we're not going to  
18 do --

19 MR. KUEHN: So --

20 THE COURT: I think it kind of defeats the purpose  
21 to be doing discovery, which is litigation. I think that  
22 you are limited. You only know -- you only can know what  
23 you know, but you have somebody here who's willing to give  
24 you information. Once you have the information, if you --  
25 if you still agree to -- if you disagree, you're going to --

1 the motion's going to have to move forward and we'll have to  
2 deal with it then.

3 But right now, it seems like just in this letter  
4 there's a bunch of information that you ought to take some  
5 time to evaluate and figure out whether you want to pursue  
6 this or whether you need to amend.

7 MR. KUEHN: That's fine. As long as we can  
8 exchange information and continue to discuss before motions  
9 are filed, that would make sense.

10 THE COURT: Okay. All right. So Ms. Petrakov,  
11 you're willing to do that?

12 MS. PETRAKOV: Absolutely.

13 THE COURT: Following up on what you just said.

14 All right. So for this one, I'm not going to ask  
15 you that arrive at a briefing schedule today. I'm just  
16 going to ask that, as promptly as practicable, you exchange  
17 information. Keep talking to each other. If you get to an  
18 agreement, I'll see a voluntary dismissal or something on  
19 the docket. If you don't, then let us know and come up with  
20 a briefing schedule.

21 MS. PETRAKOV: Thank you, Your Honor.

22 MR. KUEHN: Thank you, Your Honor.

23 THE COURT: All right? Okay. Very good. Thank  
24 you, Ms. Petrakov.

25 Okay. So is that -- that covers all of the letter

1 requests except for Ms. Adler.

2 MS. ADLER: Right.

3 MR. KUEHN: Correct, Your Honor.

4 THE COURT: So Ms. Adler's in a category of her  
5 own. So let's come on up, but let's --

6 MS. ADLER: Good morning, Your Honor.

7 THE COURT: Good morning.

8 Yeah, so do we want her tried with everyone -- you  
9 have her on the phone. We want to try to gather a set of  
10 briefing schedules for the other motions to dismiss, or do  
11 you want to take that offline and see what -- how you can do  
12 that? I'd like them all to be on relatively the same track  
13 so that I can achieve any efficiency that might be  
14 available.

15 MR. KUEHN: I think it's probably something that  
16 we can accomplish offline --

17 THE COURT: Okay.

18 MR. KUEHN: -- and send you a letter in the next  
19 day or so.

20 THE COURT: Okay. All right. So folks on the  
21 phone, I think that makes sense so I don't have to keep  
22 other folks in the courtroom waiting. So why don't you work  
23 on a briefing schedule sooner rather than later?

24 And the issues are not extensive, so I don't need,  
25 you know, bunches of affidavits and 30-page briefs and

1 whatnot. But see if you can work something out.

2 MR. KUEHN: Yes, Your Honor.

3 THE COURT: All right. And then in terms of a  
4 hearing date, do you want to do that now and then work  
5 backward from that? Do you want to pick a hearing date?  
6 Because --

7 MR. KUEHN: Sure. We can do that.

8 THE COURT: Because you're here.

9 MR. KUEHN: Yes.

10 THE COURT: So are we looking at July, August,  
11 September? You tell me.

12 MR. KUEHN: I would imagine --

13 THE COURT: With a lot of backs and forths.

14 MR. KUEHN: Yeah. I would imagine -- I would  
15 imagine August, perhaps September? I don't know how long  
16 the defendants are going to need to file their initial  
17 motions. Obviously, we've done a lot of work on the -- on  
18 our side to prepare.

19 THE COURT: Right.

20 MR. KUEHN: So it shouldn't take too long to  
21 respond.

22 THE COURT: Okay. Why don't -- why don't I do  
23 this? Instead of making you pick a date, a firm date,  
24 today, why don't I tell you what's available in August and  
25 what's available in September, and then that can be part of

1 your discussion.

2 MR. KUEHN: Perfect.

3 THE COURT: Okay. All right. So in August, the  
4 -- August 12th through 15th I think would be the best choice  
5 for August. The prior week I'm out teaching and whatnot.  
6 And the end of August always elicits family commitments and  
7 picking kids up from camp and whatnot. So we don't want to  
8 do that.

9 September is complicated as well. It would have  
10 to be the 4th or 5th, which is the Wednesday and Thursday  
11 after Labor Day. And then the next -- really the --  
12 incredibly, the next available date would probably be in  
13 October because of -- I have other commitments and there's  
14 the Jewish holidays.

15 So I would love to have the -- the 4th and the 5th  
16 look really good to me, of September.

17 MR. KUEHN: Okay. We'll discuss with the  
18 defendants and see if we can work out a schedule that lands  
19 on the 4th and 5th.

20 THE COURT: Okay. That ought to be doable because  
21 that's almost two months out from now.

22 MR. KUEHN: Should be plenty of time.

23 THE COURT: Okay. Just take sure that when you're  
24 doing the schedule that the last piece of paper in gets --  
25 would get to me no later than August 22.

1 MR. KUEHN: Certainly.

2 THE COURT: Okay? Okay. So if the folks who are  
3 on the phone for the first segment want to ring off, you're  
4 very welcome to. You can stay onboard if you like.

5 Okay. Ms. Adler.

6 MS. ADLER: Good morning, Judge.

7 THE COURT: Good morning. How are you?

8 MS. ADLER: I am good. It's nice to see you,  
9 Judge.

10 THE COURT: Is it really?

11 MS. ADLER: Yeah. Yeah. It's been a while. It's  
12 been a while. I try to stay out of trouble --

13 THE COURT: Okay.

14 MS. ADLER: -- when we're not -- we're not here.

15 THE COURT: Very good. So you filed a letter.

16 MS. ADLER: We filed a letter following the filing  
17 of the motion to dismiss, obviously.

18 THE COURT: Right.

19 MS. ADLER: And the motion to dismiss is based  
20 wholly on Your Honor's decision.

21 THE COURT: So this is a fascinating -- this is  
22 fascinating to me. What you're telling me in the letter is,  
23 based on my decision on subject matter jurisdiction, I'm now  
24 going to dismiss these cases.

25 MS. ADLER: I think you might, Your Honor.

1 THE COURT: Can you tell --

2 MS. ADLER: I think you should.

3 THE COURT: Tell me how I'm going to do -- why I'm  
4 going to do that.

5 MS. ADLER: Because as I understood Your Honor's  
6 GSE subject matter jurisdiction argument, I'll call it, Your  
7 Honor determined that there was a close nexus because these  
8 were prepetition litigation claims that LB -- prepetition  
9 contingent, unmatured litigation claims that LBHI had at the  
10 time of the bankruptcy filing, prior to the bankruptcy  
11 filing, and as to which the plan retained jurisdiction.

12 And I believe that we have put in sufficient  
13 document-related facts to show Your Honor, at least with  
14 respect to the RMBS claims asserted against the moving  
15 defendants, that one of two things are the case. Either any  
16 possible claims that Lehman Brothers Bank had were not  
17 assigned to LBHI till long after the petition, and in some  
18 instances until long after the plan was confirmed and became  
19 effective.

20 THE COURT: Okay. So time out.

21 MS. ADLER: Yeah.

22 THE COURT: So let me -- let me stay -- let me  
23 stay with you because this was presented in your letter in a  
24 very truncated way.

25 MS. ADLER: Right.

1 THE COURT: That's not a criticism.

2 MS. ADLER: We only have two pages.

3 THE COURT: I understand.

4 MS. ADLER: Got it.

5 THE COURT: So what you're saying is that for  
6 Fannie and Freddie, the estate had contingent  
7 indemnification claims.

8 MS. ADLER: No. I'm saying that we did not  
9 discuss the assignment issues in connection with Fannie and  
10 Freddie.

11 THE COURT: Okay. But, you see, you're jumping  
12 between -- you started with that the -- you're telling me  
13 that the premise of my previous decision with respect to  
14 subject matter jurisdiction on the Fannie and Freddie claims  
15 was the fact that those were prepetition contingent claims.

16 MS. ADLER: Right. That is what Your Honor's  
17 concluded were --

18 THE COURT: Well, that -- those are the facts from  
19 the ground, right?

20 MS. ADLER: I don't -- actually, Judge, I believe  
21 you found those facts. I don't think there is records  
22 supporting those facts. I think they're simply allegations  
23 in the complaint. So -- and there's nothing very clear in  
24 the complaint about when --

25 THE COURT: Well, hold on.

1 MS. ADLER: -- the rights were assigned by Lehman  
2 Brothers Bank to LBHI.

3 THE COURT: No, no, no. Don't talk to me about --  
4 don't talk about assignments. I'm just talking about that  
5 Fannie and Freddie filed huge claims against Lehman,  
6 prepetition claims, right? And --

7 MS. ADLER: Fannie and Freddie, yes.

8 THE COURT: Yes.

9 MS. ADLER: That's not -- I'm -- but you're  
10 misunderstanding me. My under -- maybe I misspoke.

11 THE COURT: Perhaps you're not explaining it --

12 MS. ADLER: I am sure that's correct, Judge. Let  
13 me try again.

14 THE COURT: So, but let me -- let me try this.  
15 Fannie and Freddie had huge claims against the estate,  
16 right? The estate settled those.

17 MS. ADLER: Correct.

18 THE COURT: Right? And then arising out of those  
19 settlements, the estate asserted the downstream claims  
20 against, amongst others, your clients.

21 MS. ADLER: That's correct.

22 THE COURT: Okay. Okay. You try because I'm not  
23 understanding what you're saying.

24 MS. ADLER: Okay. As I read your GSE subject  
25 matter jurisdiction case, and I have read it many times --

1 THE COURT: Okay.

2 MS. ADLER: -- my understanding of your analysis  
3 and the reason that you concluded that there was a close  
4 nexus sufficient to predicate subject -- related to subject  
5 matter jurisdiction was because you state -- and you state  
6 it three times -- that LBHI --

7 THE COURT: Mh hmm.

8 MS. ADLER: -- held contingent, unmaturred,  
9 prepetition claims against the mortgage originators.

10 THE COURT: Yes.

11 MS. ADLER: Okay.

12 THE COURT: Yes.

13 MS. ADLER: My point is I don't think that's  
14 factually accurate. I think that is --

15 THE COURT: You thought I was wrong then or you  
16 think I'm not going to be able to say that about the --

17 MS. ADLER: I don't think the record was before  
18 you then, so I think it was immaterial. And the allegations  
19 in the complaint do not, I think, conspicuously fail to  
20 specify when Lehman Brothers Bank, non-debtor Lehman  
21 Brothers Bank, assigned its rights, remedies,  
22 representations, and warranties to Lehman Brothers Holdings.  
23 And --

24 THE COURT: Okay. Now I -- now I understand what  
25 you're saying.

1 MS. ADLER: So -- right. So if I --

2 THE COURT: Now I understand what you're saying.

3 MS. ADLER: Okay. I'm sorry if that didn't come  
4 across clearly.

5 THE COURT: Without -- no, without -- I'm not --  
6 I'm not going to agree or disagree with how --

7 MS. ADLER: I understand.

8 THE COURT: -- you're characterizing the opinion,  
9 but now at least I understand what you're saying.

10 MS. ADLER: So the arguments very sketchily in the  
11 -- not sketchy arguments but to abbreviate them -- in the  
12 motion to dismiss are effectively twofold. One is that the  
13 assignment documents available in the public record -- and  
14 from submissions --

15 THE COURT: Mh hmm.

16 MS. ADLER: -- that Lehman has filed show that the  
17 rights that would give Lehman the ability to -- Lehman  
18 Holdings the ability --

19 THE COURT: Mh hmm.

20 MS. ADLER: -- to come after our clients, they  
21 didn't get those rights till post-petition.

22 THE COURT: I understand what you're saying.

23 MS. ADLER: Or --

24 THE COURT: Right.

25 MS. ADLER: -- from a more conventional standpoint

1 point of view, which is also, as you know --

2 THE COURT: Mh hmm.

3 MS. ADLER: -- analyzed under 12 B-1 that if  
4 Lehman Brothers Holdings purportedly got these rights before  
5 it filed its bankruptcy filing, those rights were divested  
6 when the loans were sold by Lehman Brothers Holding through  
7 SAS Co, through Structured Assets Securities Corporation --

8 THE COURT: That's a different argument.

9 MS. ADLER: To the RMBS trustees.

10 THE COURT: Okay. That's a different argument.

11 MS. ADLER: But they're two prongs in --

12 THE COURT: That's what I call the Goldilocks  
13 argument. At one point it was too early, at one point it  
14 was too late --

15 MS. ADLER: Right.

16 THE COURT: -- but it was never just right.

17 MS. ADLER: Correct.

18 THE COURT: Okay.

19 MS. ADLER: That's exactly right.

20 THE COURT: Right.

21 MS. ADLER: That is --

22 THE COURT: That's your argument?

23 MS. ADLER: That is the argument.

24 THE COURT: Okay.

25 MS. ADLER: That's correct.

1 THE COURT: All right. So I understand what  
2 you're saying now.

3 MS. ADLER: Good.

4 THE COURT: Do you understand what Ms. Adler is  
5 saying?

6 MR. KUEHN: I think I do.

7 THE COURT: I know you disagree with it, but do  
8 you understand what she's saying?

9 MR. KUEHN: I believe I understand the argument.

10 THE COURT: Okay. So, you know, so you're going  
11 to have -- you're going to -- you're going to make this  
12 motion.

13 MS. ADLER: Well, if you give us permission to  
14 make the motion.

15 THE COURT: Well, I'm --

16 MS. ADLER: We've made the motion to dismiss. Mr.  
17 -- Lehman Holdings opposition is due, Mr. Brent just told  
18 me, July 12th.

19 THE COURT: Right, but --

20 MS. ADLER: And that'll be fully briefed --

21 THE COURT: Okay.

22 MS. ADLER: -- in August.

23 THE COURT: But -- okay. But I'm not going to say  
24 discovery.

25 MS. ADLER: I understand. But the -- I mean, I --

1 THE COURT: What this is only about -- not only,  
2 but this is about not whether these cases go on but whether  
3 these cases go on here because I can't preside unless I have  
4 subject matter jurisdiction.

5 MS. ADLER: Well, that's correct.

6 THE COURT: Right.

7 MS. ADLER: And they or may not go on elsewhere.  
8 Who knows? I mean, if you don't have subject matter -- if  
9 you don't have subject matter jurisdiction, no one in the  
10 Southern District does on a related-to basis, and I don't  
11 know if there are other independent bases for federal court  
12 jurisdiction and/or, if there were, if there would be  
13 personal jurisdiction. With respect to my client, there  
14 would not be personal jurisdiction, I don't think --

15 THE COURT: All right. Well, that's --

16 MS. ADLER: -- in the Southern District.

17 THE COURT: That's way beyond what we're going to  
18 talk about.

19 MS. ADLER: Right.

20 THE COURT: So, okay. So why don't you have a  
21 seat.

22 MS. ADLER: Okay.

23 THE COURT: Thank you for patiently explaining  
24 what your -- what your theory was. Okay.

25 MR. KUEHN: So, Your Honor, first of all, before I

1 even get into the merits on their motion to dismiss --

2 THE COURT: Yeah. You don't have to get --

3 MR. KUEHN: -- which I don't think makes sense. I  
4 don't think it makes sense here today.

5 THE COURT: That's -- don't make -- don't get into  
6 the merits of the motion. I was just -- based on the  
7 limited description in Ms. Adler's letter, I wanted to  
8 understand what her thinking was. Now I understand what her  
9 thinking was, and I'm not saying whether I agree with it --  
10 whether I agree with the new theory, whether I agree with  
11 the characterization of the previous opinion, none of that.  
12 This was simply a request for a stay of discovery, and I'm  
13 -- I've had those requests before, and I'm not going to  
14 grant it now. So go -- so I don't know that there's that  
15 much more to talk about.

16 MR. KUEHN: I don't hint I have anything else to  
17 say if you're denying their request to file a motion for  
18 stay of discovery.

19 THE COURT: Well, Ms. Adler, do you want to file a  
20 formal motion?

21 MS. ADLER: Yeah, we -- I mean, there are -- you  
22 know, there's caselaw on when a stay of discovery may be  
23 appropriate, and the standards which I specified in the  
24 letter are the Court is to consider the -- it is true it's  
25 discretionary. It's not automatic, but if the Court doesn't

1 have subject matter jurisdiction and there's good argument,  
2 an argument that is quote "not unfounded in the law," and  
3 respectfully, it's your argument that we're relying upon  
4 here, so I know, you know, it's founded in the law. People  
5 should not be going forward.

6 And then the other factors that you consider are  
7 the breadth of the discovery sought, the strength of the  
8 underlying motion, and the burden, and whether the motion is  
9 potentially dispositive.

10 THE COURT: How many -- how many loans are  
11 involved in --

12 MS. ADLER: In the moving defendants? From -- on  
13 behalf of the moving defendants?

14 THE COURT: Mh hmm.

15 MS. ADLER: Ms. Henderson's on the line, and she  
16 can tell you how many are from her clients. Between my  
17 clients and counsel representing the other moving  
18 defendants, there are about 55.

19 THE COURT: What are the -- where are we in the  
20 CMO in terms of moving deadlines for discovery?

21 MS. ADLER: We --

22 THE COURT: Because you're asking me to basically  
23 suspend the CMO.

24 MS. ADLER: No, I'm not at all. And I'm -- we're  
25 not asking about the GSE because that case is continuing.

1 We're talk about the RMBS --

2 THE COURT: And you're asking me to suspend the  
3 CMO with respect to the RMBS.

4 MS. ADLER: Yeah, but there're --

5 THE COURT: The new wave.

6 MS. ADLER: -- 30 defendants. Maybe 20 moving  
7 defendants. There are 190-plus other defendants.

8 THE COURT: No, but you're asking me to disrupt  
9 the CMO with regard to all those defendants, to suspend the  
10 CMO.

11 MS. ADLER: Pending Your Honor's decision on the  
12 --

13 THE COURT: Ms. Adler, the effect of that is that  
14 the dates in the CMO would be suspended until I decide.

15 MS. ADLER: I actually, Your Honor, well, don't  
16 think that it's likely. We're asking for a brief stay  
17 pending your decision.

18 THE COURT: But it would -- if it --

19 MS. ADLER: You'll have the papers in August, at  
20 the latest.

21 THE COURT: If there -- if there -- if there's a  
22 discovery deadline in August, I'm not --

23 MS. ADLER: No, discovery is ongoing. I mean, the  
24 parties have exchanged -- and Mr. Kuehn will correct me if  
25 I'm wrong -- have exchanged requests for production and

1       interrogatories and their objections to them. There have  
2       been -- the only documents that have been produced which  
3       were not sort of part of formal discovery were the loan  
4       files --

5               THE COURT: Okay.

6               MS. ADLER: -- and the trust documents that Your  
7       Honor --

8               THE COURT: So answer me this. What's the next  
9       date? I don't want to bother having to rule on a motion  
10      where, as a practical matter, there's no effect. If there  
11      are --

12              MS. ADLER: Well, we are all -- there's very, you  
13      know, the --

14              THE COURT: Could someone answer my narrow  
15      question? What is the next operative date in the CMO that  
16      would be suspended if I were to agree with you that  
17      discovery should be stayed?

18              MS. ADLER: Hold on just a minute, and I will tell  
19      you.

20              THE COURT: Do you know, Mr. Kuehn?

21              MR. KUEHN: Substantial completion --

22              MS. HENDERSON: Good morning, Your Honor. This is  
23      Tracy Henderson, American Mortgage Law Group --

24              THE COURT: Well, Ms. Henderson, no. No, no, no.  
25      Hang in there. I'm going to hear from Mr. Kuehn.

1 MS. HENDERSON: I wanted to ask a question, Judge.

2 MR. KUEHN: The next hard and fast date in the CMO  
3 related to document production and discovery is the  
4 substantial completion of discovery, of document production  
5 on April 13th next year.

6 THE COURT: On April 13th next year?

7 MR. KUEHN: Yes.

8 THE COURT: So Ms. Adler, why are we doing this?  
9 What's the point?

10 MS. ADLER: Because, Your Honor, before April  
11 13th, everybody is in good faith trying very hard to cull  
12 trillions of documents responsive to, you know, what both  
13 sides think are very overbroad document requests.

14 THE COURT: Okay. So if you -- if you -- if you  
15 do nothing until I rule on this sometime in the fall, you  
16 have until April next year.

17 MS. ADLER: No, I would -- theoretically you're  
18 supposed to be producing on a rolling basis, and so is every  
19 --

20 THE COURT: So just roll slower.

21 MS. ADLER: Well, okay. I mean, I --

22 THE COURT: I mean, this is --

23 MS. ADLER: I think it's --

24 THE COURT: Listen. This is a waste of everyone's  
25 time.

1 MS. ADLER: On the contrary, Your Honor. If --

2 THE COURT: There is no effect. If I were to  
3 grant a quote, unquote "stay," there is no effect.

4 MS. ADLER: There actually is an effect, Your  
5 Honor. Our clients are all spending a whole lot money  
6 looking for responsive documents determining what's  
7 responsive.

8 THE COURT: Mr. Kuehn, I don't --

9 MS. ADLER: We're not waiting until April.

10 THE COURT: I don't want to have the estate or  
11 these parties spend money on a motion for stay of discovery  
12 when there is no practical effect of it. What am I missing  
13 here? There's not -- there aren't depositions scheduled for  
14 next week. There is not a production deadline for next  
15 week. You're talking about something that is 10 months  
16 away. There is no practical effect to this.

17 MS. ADLER: Well, Your Honor, if we're going to  
18 complete discovery by April of next year -- which includes  
19 obviously producing documents, answering interrogatories,  
20 taking depositions after that --

21 THE COURT: So hypothetically, if I rule on your  
22 motions in October -- October, okay. October. November,  
23 December, January, February, March, April. That's six  
24 months.

25 MS. ADLER: Your Honor, I am totally comfortable,

1 A, if Your Honor can rule in October, and, B, if in front of  
2 the Court right now we can all agree that --

3 THE COURT: I'm not --

4 MS. ADLER: -- the moving defendants are not  
5 violating any --

6 THE COURT: They should -- moving --

7 MS. ADLER: -- obligations --

8 THE COURT: How about this? The moving defendants  
9 shall not be deemed to have violated their obligations under  
10 the CMO if between now and the disposition of the motion to  
11 dismiss they do not produce any additional documents.

12 MS. ADLER: That's totally acceptable. That's  
13 fine with me, Your Honor. Thank you.

14 MR. KUEHN: I mean, that's fine as long as the  
15 defendants continue to participate in all the other written  
16 discovery that we need to deal with, interrogatories and --

17 THE COURT: What -- but that's what I was asking  
18 before. What's the next date for them to do something?

19 MR. KUEHN: Well, they are supposed to start  
20 rolling production in late June. I think it's June 25th or  
21 26th.

22 THE COURT: Okay, so --

23 MS. HENDERSON: 29th.

24 THE COURT: Okay.

25 MR. KUEHN: 29th.

1 THE COURT: Okay. So here we are 10 days before  
2 that. Do you have documents to produce, Ms. Adler?

3 MS. ADLER: I would have by June -- I would have  
4 some. I have 50 -- my client has 51 loans. They're a tiny  
5 little thing. We have loads of clients, so have we started  
6 to look for and go through documents? Indeed, we have.

7 THE COURT: Okay. So if you have documents now,  
8 as of today, why don't you just produce them? You just said  
9 that you're obligated to make a rolling production. So if  
10 you have documents, you should produce them.

11 MS. ADLER: And then, Your Honor, we can stop  
12 pending -- stop doing additional --

13 THE COURT: Hold on.

14 MS. ADLER: I'm not averse to producing them. I'm  
15 trying to diminish the burden or avoid the burden --

16 THE COURT: You're representing to me that you  
17 want to have your clients not have to continue to look for  
18 documents. On the other hand, document -- there's a date  
19 for production next week. So either people have been  
20 diligently looking for documents, or they haven't. You  
21 can't have it both ways.

22 MS. ADLER: We have been, Your Honor.

23 THE COURT: Okay. Then if you have documents now,  
24 why is it burdensome to produce them?

25 MS. ADLER: Because they're for a couple of loans.

1 MS. HENDERSON: Your Honor --

2 MS. ADLER: I'm happy to produce what I've got.

3 THE COURT: Okay.

4 MS. ADLER: The point is should the burden and  
5 expense be ongoing if there is a --

6 THE COURT: Ms. Adler, you are -- okay. We're now  
7 beyond the initial phase where I have patience, okay? You  
8 are -- if -- to the extent that you want to avoid future  
9 burden, that's one thing. To the extent that you have in  
10 good faith been acting under the CMO and you have documents  
11 --

12 MS. ADLER: I'm --

13 THE COURT: -- today, which you're suggesting to  
14 me that everyone's working in good faith and they don't want  
15 to be criticized for not having done that, then if you have  
16 documents that have been located today, those should be  
17 produced. And that should go for everybody.

18 MS. ADLER: That's fine, Your Honor. I'm not  
19 objecting to that. I think what we're doing is trying to  
20 stop the clock as of today. No one's saying that we  
21 shouldn't produce that which we've already collected.

22 THE COURT: Well, it's very unclear that that's  
23 not what you would want because you are telling me you don't  
24 want to undertake any burden whatsoever.

25 MS. ADLER: Well, yes, going forward. Exactly

1 right. I mean, I'm here making the application to make the  
2 motion. I respect that Your Honor thinks that no motion --  
3 no motion is necessary given what we've just discussed.  
4 But, you know, answering interrogatories is not inexpensive  
5 or without burden. There're like 90-some-odd, I think,  
6 interrogatories in -- right?

7 THE COURT: What's the date for answering  
8 interrogatories?

9 MS. ADLER: The responses and objections are due  
10 within 45 days from the time they were served, and they were  
11 served on or about May 20 or 22. You'll have to confirm.

12 THE COURT: Look, here's the thing. Okay.

13 MS. HENDERSON: (Indiscernible).

14 THE COURT: CMO -- the CMO was an extensively  
15 litigated and negotiated document. There was nothing in the  
16 CMO that said -- that talked about any stays of discovery,  
17 any ability to modify it for any reason like this. So I  
18 would suggest that if you want to make your motion, make  
19 your motion. We're going to keep going in the meantime. I  
20 told you what my views are. I'll rule on the motions to  
21 dismiss, and we can take it from there.

22 MS. ADLER: I'm sorry. So if we want to make --

23 THE COURT: Make a motion.

24 MS. ADLER: Make the motion to stay? Fine.

25 THE COURT: Okay.

1 MR. KUEHN: Your Honor, if I could just make a --

2 THE COURT: Sure.

3 MR. KUEHN: -- couple of final points. I  
4 apologize. I just would like to make the point that the  
5 Lehman estate, it's not an operating business. It's a  
6 liquidating --

7 THE COURT: Oh, they're quite aware of that.

8 MR. KUEHN: It's trying to recover money for its  
9 creditors.

10 THE COURT: Yeah.

11 MR. KUEHN: And responding to these motions --

12 THE COURT: I understand.

13 MR. KUEHN: -- it's costly. It's costly and --

14 THE COURT: I understand.

15 MR. KUEHN: -- it hurts our creditors, and, you  
16 know, if it's a meritless motion that's going to be a waste  
17 of time, it's also a waste of money. And yes, you know, our  
18 client has a (indiscernible) fee recovery provisions in the  
19 seller's guide --

20 THE COURT: Mh hmm.

21 MR. KUEHN: -- but the problem is we've been told  
22 by a lot of defendants when we're discussing resolution of  
23 claims that there's no money there. So it's almost a free  
24 option when they keep filing motions.

25 THE COURT: Well, that's the part that I've never

1 understood about this. All -- and we've had this  
2 conversation countless times. To the extent that defendants  
3 say, I have no money, I've said to the plan administrator on  
4 repeated occasions, you should follow up on that because  
5 it's not worth the plan administrator's time and money  
6 pursuing a judgment that you're not going to be able to get  
7 satisfied. And then when those conversations begin to take  
8 place, all of a sudden, things quiet down because maybe  
9 there is money there.

10 MR. KUEHN: Yes, Your Honor.

11 THE COURT: Okay. So I -- you know, I only know  
12 what I know. People are going to act in their own economic  
13 interest. I believe that one way or another, these cases  
14 are going to move forward somewhere and that discovery  
15 informs a settlement discussion.

16 So I understand that the defendants continue to  
17 seek to avail themselves of every motion that there is. I  
18 get that. I've said at the beginning I'm not cutting off  
19 anybody's due process rights. That imposes a cost on the  
20 plan administrator. It is what it is. I -- there's nothing  
21 that I can do about that, you know, within limits.

22 I'm not saying that folks ought to file -- be able  
23 to file frivolous motions, and I think that I've done  
24 everything that I can to discourage repeat motions and bake  
25 into this version of the CMO the ability to pro forma things

1 and simply incorporate by reference previous rulings so that  
2 these folks, new folks, were afforded due process and have  
3 the benefit of a substantive ruling so that they have their  
4 rights preserved for appeal and other matters going forward.  
5 That was the whole theory of the new version of the CMO.

6 MR. KUEHN: Absolutely, Your Honor. Absolutely,  
7 Your Honor. I just want to be clear that we will be putting  
8 in our opposition to their substantive motion, a motion to  
9 dismiss --

10 THE COURT: Mh hmm.

11 MR. KUEHN: -- in July. July 12th, I believe, is  
12 the date.

13 THE COURT: Okay.

14 MR. KUEHN: And so, you know, you'll see our  
15 arguments then on the merits.

16 THE COURT: Right.

17 MR. KUEHN: And you'll see it doesn't make sense  
18 to stay discovery at all.

19 THE COURT: Okay. Well, then that's fine. Ms.  
20 Adler thinks she has a winning argument both on subject  
21 matter jurisdiction and staying discovery, so we'll have to  
22 look at it. Okay. I mean, to the extent that your headline  
23 argument is going to be that to the extent that Ms. Adler is  
24 saying we've got a sure winner on subject matter  
25 jurisdiction, I mean, fundamentally you're going to oppose

1 that motion to stay discovery because you think she's wrong  
2 on the subject matter jurisdiction.

3 MR. KUEHN: And because there's no additional  
4 burden because if we lose on subject matter jurisdiction, as  
5 you pointed out, we'll be suing in a different court, and  
6 the same discovery will be at issue.

7 THE COURT: Well, Ms. Adler seems to have a theory  
8 that Lehman -- that that's not true, that there may be no  
9 court that you can sue in.

10 MR. KUEHN: Yes, she does have a new argument on  
11 that point.

12 THE COURT: Okay.

13 MR. KUEHN: The standing argument that we'll  
14 explain why that's --

15 THE COURT: The Goldilocks argument.

16 MR. KUEHN: The Goldilocks argument. We'll  
17 explain why it's simply incorrect. But the primary argument  
18 doesn't affect --

19 THE COURT: Okay.

20 MR. KUEHN: -- where the --

21 THE COURT: All right. Well, look. I mean, I had  
22 hoped that we would be able to get to a practical resolution  
23 of this issue. Maybe that will emerge as we get later, but  
24 for now, I'm not going to be in the position of any  
25 defendant saying that their rights under federal rules were

1 truncated anyway. So --

2 MS. ADLER: Your Honor, two points. Obviously, we  
3 don't agree with the meritless. And also, to the extent  
4 that our arguments prevail with respect to subject matter  
5 jurisdiction, they probably preclude actions in other  
6 courts.

7 But the second point is if indeed Mr. -- Counsel  
8 is --

9 THE COURT: Ms. Adler, you just won. You're going  
10 to file your motion. Why aren't we done?

11 MS. ADLER: I'm trying to address Counsel's point  
12 and your point about the plaintiff's sensitivity to cost  
13 issues. So what I was going to propose -- which meshes with  
14 something you said earlier, Your Honor -- is that if we wait  
15 till we see the arguments on July 12th that Defendant makes  
16 and we can do so in evaluating whether we think it makes  
17 sense to go forward with the motion to stay without being  
18 deemed not in compliance with any discovery obligations, I'm  
19 happy to do that. No one wants to make frivolous motions or  
20 motions that have no chance of prevailing, obviously, on  
21 either side.

22 THE COURT: But the CMO will remain in effect.  
23 The deadlines will remain in effect. You can do whatever  
24 you believe you're entitled to do. If you want to wait to  
25 file your motion till you see their response to the -- to

1 the subject matter jurisdiction motion, you can do that.

2 But I'm not -- I'm not going to suspend any deadlines

3 pending that. You can decide when you want to stay

4 discovery.

5 MS. ADLER: Well, I think -- I understand that

6 Your Honor isn't suspending deadlines. I was going back to

7 a comment Your Honor made a short time ago about because the

8 deadlines are over a period of time that ranges --

9 THE COURT: I'm not going to micromanage whether

10 or not it's okay for your clients to spend one hour a week

11 looking for documents or 10 hours a week looking for

12 documents.

13 MS. ADLER: I understand, Your Honor.

14 THE COURT: You --

15 MS. ADLER: We'll work it out.

16 THE COURT: You folks do whatever you need to do

17 under the order, and I'm not going to conduct an

18 investigation into what you've done. I trust that you'll

19 proceed in good faith.

20 MS. ADLER: Of course. Thank you very much, Your

21 Honor.

22 THE COURT: Okay. So, Ms. Adler, are you and the

23 other similarly lined parties in fact going to wait and see

24 what Lehman's response is?

25 MS. ADLER: I have to speak to Counsel, and

1 they're on the phone, so I don't want to do that --

2 THE COURT: Okay.

3 MS. ADLER: -- obviously right in front of  
4 everybody.

5 THE COURT: Would you be so kind, after you've had  
6 a chance to confer with Ms. Henderson or whoever else that  
7 it is, could you let the plan administrator know --

8 MS. ADLER: Sure.

9 THE COURT: -- what you're going to do?

10 MS. ADLER: Yeah.

11 THE COURT: Just so they can --

12 MS. ADLER: We might try and work something  
13 consensual out with them, mirabile dictu.

14 THE COURT: That would be --

15 MS. ADLER: I know, Your Honor.

16 THE COURT: Stranger things have happened.

17 MS. ADLER: Not many, but sure.

18 THE COURT: Not many.

19 MS. ADLER: Sure, Your Honor.

20 THE COURT: Okay.

21 MS. ADLER: Yeah.

22 THE COURT: All right.

23 MS. ADLER: And if we work something out, we'll  
24 let you know too.

25 THE COURT: Okay.

1 MS. ADLER: All right.

2 THE COURT: All right.

3 MS. ADLER: Thank you very much, Your Honor.

4 THE COURT: All right. Thank you. All right.

5 MR. KUEHN: Thank you, Your Honor.

6 THE COURT: We're done for this?

7 MR. KUEHN: We are done.

8 THE COURT: We are done. Okay. Thank you very  
9 much. Okay. So we're going to roll right into the 11:00  
10 calendar. So thank you. Okay. First on the 11:00 calendar  
11 is 45th Street Park Avenue.

12 Okay. Could the folks who are here for the 11:00  
13 Lehman matter please come up?

14 MR. FAIL: Good morning, Your Honor.

15 THE COURT: All right. Good morning, Mr. Fail.  
16 How are you?

17 MAN: Good morning, Your Honor.

18 THE COURT: All right, let me --

19 MR. WU: Good morning, Your Honor.

20 THE COURT: All right. Let me --

21 MAN: Good morning, Your Honor.

22 THE COURT: Okay. Let me see who's on the phone.

23 (Overlapping Voices)

24 MR. GREGORY: Ricky Gregory is present, Your  
25 Honor.

1 THE COURT: I'm going to be muting the lines of  
2 everyone except for Mr. Wu. And just to make it clear, this  
3 is an unusual circumstance in that it's very rare that when  
4 a party wishes to make a substantive argument that I allow  
5 that to be made telephonically.

6 So, Mr. Wu, we have afforded you that courtesy.  
7 It appears that you live in Chicago. That's for today only.  
8 And going forward, as is my practice in every case, to the  
9 extent that there would have to be any further substantive  
10 arguments on this matter or any other, I would expect that  
11 you would appear in person.

12 MR. WU: Thank you, Your Honor. I do appreciate  
13 it.

14 THE COURT: All right. So, there was a late-  
15 breaking slew of documents that hit the docket, many of  
16 which I'm just going to put to the side. Although I would  
17 note that they -- it appears that people are copying  
18 documents from each other and from documents that are on the  
19 docket, and that folks are actually copying from the wrong  
20 documents.

21 So, you can take a look at what you filed, and I'm  
22 sure that if you spend a little time, you'd figure out that  
23 you're copying from the wrong documents. So, I'll come back  
24 to that point perhaps later.

25 So, with respect to Mr. Wu, there was received by

1 the Court on June 13th a document bearing a June 11th date  
2 that styled as a motion to demand service, in which Mr. Wu,  
3 you assert that you didn't receive service and you state  
4 without any support whatsoever that it's intentionally  
5 committed by the debtor.

6 So, we went ahead and pulled the certificate, the  
7 affidavit of service, as we do in every case, and it did not  
8 appear that your name was on the affidavit of service.

9 So, Mr. Fail, did I miss something in the  
10 affidavit of service.

11 MR. FAIL: No, Your Honor. Good morning. For the  
12 record, Garret Fail, Weil, Gotshal & Manges, here this  
13 morning with my colleague Jason Hufendick.

14 Your Honor is correct. And thank you for giving  
15 me an opportunity to point out it was not an intentional  
16 omission. It was an inadvertent oversight that Mr. Wu was  
17 not served with our objection to his motion, which I would  
18 note, and I'm sure Your Honor is aware, is different than if  
19 the Debtor, or here, the plan administrator, were the  
20 movant. This is simply an objection to his motion.

21 I think, as Your Honor and the Plan Administrator  
22 is aware, Mr. Wu did receive actual notice in time to file  
23 quite timely in advance of this hearing a substantive  
24 lengthy reply.

25 THE COURT: Okay. Let me --

1 MR. FAIL: Nonetheless, Your Honor, we --

2 THE COURT: Let me ask --

3 MR. WU: The reply --

4 THE COURT: Let me ask this --

5 MR. WU: The reply that I filed --

6 THE COURT: Mr. Wu --

7 MR. WU: (indiscernible)

8 THE COURT: Mr. Wu, here's the way it works.

9 You're on the phone. You will --

10 MR. WU: Yes, Your Honor.

11 THE COURT: You're going to get to speak when I  
12 ask you to speak. Okay?

13 MR. WU: I understand. And I apologize, Your  
14 Honor.

15 THE COURT: All right. Otherwise, everyone's  
16 going to be talking over each other. Mr. Wu, my question to  
17 you is when did you actually see the objection that had been  
18 filed?

19 MR. WU: I saw the objection that was filed  
20 shortly after it hit the docket. And that's only because I  
21 was looking over the dockets and to make sure I --

22 THE COURT: Mr. Wu, I understand that you weren't  
23 served with it. We're not going to dispute that. There is  
24 no dispute as to that. My question is what was the date  
25 that you actually saw the document as you continued to check

1 the docket? The Plan Administrator's objection was filed on  
2 May 29th. So --

3 MR. WU: I don't know the exact date, but it would  
4 be around that date --

5 THE COURT: Okay.

6 MR. WU: -- May 29th or May 30th.

7 THE COURT: So, at that moment you knew it hadn't  
8 -- or shortly thereafter, it hadn't been served on you.

9 Now, Mr. Fail, when you figured out that Mr. Wu  
10 had inadvertently not been served, what did you do, if  
11 anything?

12 MR. FAIL: Your Honor, we reached out to Mr. Wu  
13 and asked if he would like additional time, and we offered  
14 to adjourn this hearing and contact your chambers to work  
15 out another date if he needed additional time, wanted to  
16 file an additional substantive response. He requested that  
17 we proceed today, reserving all of his rights to make  
18 arguments today, Your Honor.

19 THE COURT: Okay. So, Mr. Wu, what is it that you  
20 -- when the Plan Administrator -- when Mr. Fail reached out  
21 to you to say -- to acknowledge the error in service and to  
22 offer you an adjourned date so that you could file something  
23 substantive, obviously, you didn't take them up on that  
24 offer. Why not?

25 MR. WU: When I received the call yesterday, it

1 was a series of three phone calls. We finally spoke, I  
2 would say, around 6:00 Eastern time, 5:00 Central time.  
3 During that call -- you know, it felt more threatened --  
4 threatened than any other meaning to it. So, I just take my  
5 --

6 THE COURT: I'm sorry. I cannot understand the  
7 word -- I cannot understand you. All I can hear is the word  
8 threatened.

9 MR. WU: Right. So, I --

10 THE COURT: Mr. Fail has told me that he called  
11 you and said, would you like to adjourn the hearing so that  
12 you could file a response, and you apparently said no.

13 MR. WU: Correct.

14 THE COURT: So, what is it that you want to happen  
15 today? What do you think -- why -- if you want to respond  
16 and he gave you the opportunity to respond, then why are we  
17 here today?

18 MR. WU: What I want to respond, what I want to  
19 say is stated in my motion, and it's stated on my response  
20 to the objection and the demand for service. Everything  
21 that I want to say is within the motion.

22 I just want to let Your Honor know and the  
23 Honorable Court know that my due process was not honored,  
24 and my rights have been violated, and to take that into  
25 consideration.

1 THE COURT: Okay. Mr. Wu, we're not going to play  
2 games. I understand that you are not represented by counsel  
3 and that you're appearing pro se. In plain English, last  
4 night Mr. Fail called you and said, you weren't served;  
5 would you like more time; we'll adjourn the motion. He  
6 offered you the opportunity to not be here today and to file  
7 a substantive response to the Plan Administrator's  
8 objection. That's due process. That's what it looks like.

9 Now, you apparently said no, you want to be on the  
10 phone. So, you have a choice to make. If you don't want to  
11 file further substantive papers, we can go forward today.  
12 And I'm going to rule on your motion, and that would  
13 encompass all of these joinders.

14 But you're not -- you can't have it both ways.  
15 When counsel calls you and acknowledges that you weren't  
16 served, and offers you more time, it would seem logical for  
17 you to have said, thank you, I'd like a couple of weeks to  
18 file a response. But you didn't do that. You're here  
19 today.

20 So, there was an inadvertent error. There's no  
21 conspiracy theory here. This was a very unfortunate error.  
22 Others who have filed joinders, in fact, were served. Their  
23 names are listed on the certificate of service. You have  
24 already told me that you had actual notice. You saw the  
25 objection. You could have called my chambers. I know that

1 you know how to get in touch with chambers because you  
2 contacted my chambers numerous times in order to arrange for  
3 a hearing date.

4 So, if we're not going to go forward with this  
5 argument today, because you're going to insist on your right  
6 to file something more, then you can file something more,  
7 and then one of two things is going to happen. I will  
8 either take the matter under advisement and issue a ruling  
9 without there being another hearing like this, or I will  
10 schedule another hearing and you will have to appear in  
11 person. You've now had --

12 MR. WU: Your Honor --

13 THE COURT: You've now had almost three weeks to  
14 look at the arguments that were made by the Plan  
15 Administrator and to think about whether or not you think  
16 that you still have an argument for relief. So, what would  
17 you like to do, Mr. Wu?

18 MR. WU: I would like to proceed today, Your  
19 Honor.

20 THE COURT: Saying that you would like to proceed  
21 today, by that, let's be very specific. By that, that means  
22 that if you don't like the disposition that you get from the  
23 Court and you wish to pursue your rights further on appeal,  
24 that the fact that there was an inadvertent to serve you is  
25 not something that you would be permitted to complain about

1 subsequently.

2 MR. WU: Yes, Your Honor.

3 THE COURT: Okay. On this record, then,  
4 notwithstanding the inadvertent failure of the Plan  
5 Administrator to serve Mr. Wu with the objection, we're  
6 going to go forward and entertain argument on the matters.

7 Okay. So, thank you Mr. Wu. I think that's  
8 helpful. So, Mr. Wu, you did file a response on June 6th,  
9 correct?

10 MR. WU: Correct.

11 THE COURT: Okay. All right. Mr. Fail, I've read  
12 the objection that you filed. I don't think I have any  
13 questions. Is there anything more that you want to add  
14 before I hear from Mr. Wu?

15 MR. FAIL: No, thank you, Your Honor.

16 THE COURT: Okay. All right. Mr. Wu, have you  
17 had an opportunity to really parse through what's being said  
18 in the objection?

19 MR. WU: Yes, I have.

20 THE COURT: Okay. So, well let me just take a few  
21 minutes for the benefit of everybody on the phone, just so I  
22 can make sure that everybody understands this.

23 At Docket 59409, there was a motion filed on  
24 behalf of joint liquidators with respect to entities known  
25 as LP4 and LP5. That motion essentially sought permission

1 to file a late claim with respect to certain so-called  
2 exempt entities that had been dissented from the bar date  
3 and were not were not required to file a proof of claim.

4 The facts and circumstances that were set forth in  
5 that document were extremely unique. That's the document,  
6 Mr. Wu, that you used your template for your motion. It  
7 didn't require any detective work on my part. You cited to  
8 that document in your pleading. And just to make clear the  
9 fact that it was essentially a cut-and-paste, you refer in  
10 your pleading to LP4 and LP5, which, of course, has no  
11 application to your claims.

12 So, I think that you, and apparently other folks  
13 who have sought to join you, saw that and thought, well,  
14 there are similar securities involved. Perhaps those  
15 arguments apply to you, and that you might be able to file a  
16 late proof of claim. That's not correct, for any or all of  
17 the reasons that are set forth in the Plan Administrator's  
18 pleading.

19 First, and most importantly, your securities are  
20 held -- are in a trust. And even though that trust might  
21 have been listed on the exempt entities list, in fact, a  
22 proof of claim that beneficially covers securities that you  
23 hold.

24 I'm not even going to address the issue of when  
25 you acquired the security and whether or not you acquired

1       them after the bar date. That's a whole separate set of  
2       issues.

3               The other thing that seems to be unfortunate, is  
4       there's a misreading of the subordination provisions. So,  
5       even if there could be a proof of claim, and even if it  
6       could be allowed, it's deeply, deeply subordinated to a  
7       level that does not receive a distribution under the plan.

8               The guarantee of the subordinated securities,  
9       which is related to the securities that you hold, the claim  
10       that you hold with respect to those securities, only comes  
11       into play to the extent that there is a distribution on the  
12       underlined subordinated securities. There's not, because  
13       those securities are lower than all unsecured claims against  
14       LBHI.

15              Under the plan, pursuant to the Bankruptcy Code,  
16       there is a priority of payment. Equity securities and those  
17       claims that are on a parity with equity securities are not  
18       entitled to receive a distribution.

19              MR. WU: Your Honor, may I?

20              THE COURT: Yes, go ahead. So, I'm struggling to  
21       understand the basis on which you believe you're entitled to  
22       a distribution. Moreover, the concept that these many years  
23       later, it would be the right thing to do to give you  
24       permission to file a proof of claim and the blanket  
25       assertion that there is no prejudice is simply not true.

1           There have been precious few instances in which  
2           someone has been granted leave to file a late proof of  
3           claim. And your own arguments are belied by the fact that  
4           you have a host of joinders, because it appears that this  
5           argument has now seemed to gain some traction among folks  
6           who are either in touch with you, or who have read about it.

7           But there seems to be some connectivity here with  
8           people copying the same letter and sending it in as a  
9           joinder. And far from being just you, Mr. Wu, there are  
10          apparently a bunch of other people think that they'd like to  
11          have similar relief.

12          So, in light of all that, I'm happy to hear  
13          anything that you think I've gotten wrong or that the Plan  
14          Administrator has gotten wrong as to why you should be  
15          permitted to file a new claim, and why even if you were  
16          permitted to file a new claim, under the clear provisions of  
17          the plan and the securities at issue, why you think you  
18          would be entitled to any distribution.

19          MR. WU: Your Honor, the guarantee was the parity,  
20          and the capital trust securities which are in parity with  
21          LBIE and ECAPS. That's the way I believe that's been  
22          treated.

23          THE COURT: Mr. Wu --

24          MR. WU: And --

25          THE COURT: Mr. Wu, I cannot understand. This is

1 a demonstration of why folks need to come in person. I  
2 cannot understand the words. I cannot understand you. So,  
3 you do you're too close to your phone or you're too far from  
4 your phone, or something.

5 MR. WU: I'm sorry, Your Honor. The guarantee  
6 that I was referring to states that the securities that I'm  
7 referring is on parity with LBIE and ECAPS. And that's when  
8 (indiscernible) the liability (indiscernible) --

9 THE COURT: With LBIE?

10 MR. WU: Yes, LBIE. It's in parity -- if you look  
11 at the (indiscernible) on Exhibit 8, they issued preferred  
12 securities which are in parity with our capital trust. And  
13 that's why I filed the motion. It's because that -- it is  
14 in parity and we're entitled to the same treatment, because  
15 (indiscernible) --

16 THE COURT: Hold on. Mr. Fail, maybe you're --  
17 given that you're much younger than me, maybe you can  
18 understand what Mr. Wu is saying, because I simply,  
19 physically cannot understand what he's saying.

20 MR. FAIL: I'll attribute it to me being on the  
21 better side of the speakers, rather than say anything else,  
22 Your Honor. But I think what Mr. Wu is saying is that --  
23 and it's what he wrote in his -- in part of his reply. He's  
24 focusing on the language "parity." So, Your Honor, the  
25 subordination provisions said three things.

1 THE COURT: Hold on, Mr. Fail. Let me catch up  
2 with you.

3 MR. FAIL: That's okay.

4 THE COURT: So, which document of Mr. Wu's are you  
5 talking about?

6 MR. FAIL: I'm referring to Document 59751, which  
7 is his reply.

8 THE COURT: Okay, hold on. Let me pull that up.

9 MR. FAIL: Take your time, Your Honor. I have a  
10 copy that I can hand up, if it would be helpful.

11 THE COURT: Which (indiscernible) is it?

12 WOMAN: (indiscernible)

13 MR. FAIL: It was filed on 6/6. Your Honor, may I  
14 approach?

15 THE COURT: Yeah. Okay. So, Mr. Wu, I'm looking  
16 at the document that you filed on June 6th.

17 MR. FAIL: And so, Your Honor, if you look --

18 THE COURT: Just -- just --

19 MR. FAIL: Apologies.

20 THE COURT: I can't let it go unsaid --

21 MR. FAIL: Okay.

22 THE COURT: -- because it's very troubling to me,  
23 Mr. Wu, that you engaged in this little bit of gamesmanship  
24 about today. You filed a response. You discovered you  
25 hadn't been served. Mr. Fail went to the trouble of calling

1 you. It's just not the way one proceeds. It's a waste of  
2 everyone's time.

3 That being said, I'm considering your objection on  
4 the merits. So, Mr. Fail --

5 MR. FAIL: An example of the quote is on Page 2 of  
6 the --

7 THE COURT: Page 2.

8 MR. FAIL: -- of that reply, at the very top, Your  
9 Honor.

10 THE COURT: Yeah.

11 MR. FAIL: It's a -- it purports to be a quote  
12 from the guarantee subordination section. And so, it  
13 describes that the guarantee --

14 THE COURT: Yeah?

15 MR. FAIL: -- will cost acute and unsecured  
16 obligation of LBHI that ranks --

17 THE COURT: Right.

18 MR. FAIL: -- one, subordinate, as Your Honor  
19 pointed out --

20 THE COURT: Right.

21 MR. FAIL: -- to the rights of all other general  
22 unsecured creditors.

23 THE COURT: Right.

24 MR. FAIL: Second, parity -- so, it's one, two and  
25 three -- on parity with the most preferred -- most senior

1 preferred or preference stock, now or hereinafter issued by  
2 LBHI --

3 THE COURT: Right.

4 MR. FAIL: -- which is consistent with what Your  
5 Honor had said and what --

6 THE COURT: Yeah.

7 MR. FAIL: -- the Debtor said. But also, with any  
8 guarantee --

9 THE COURT: Right.

10 MR. FAIL: -- by LBHI in respect to preferred  
11 securities of any affiliate of HI.

12 THE COURT: Right.

13 MR. FAIL: Mr. Wu is suggesting that there were  
14 affiliates that LBHI guaranteed, and apparently some -- but  
15 he hasn't described or listed any guarantee of any preferred  
16 securities from an entity that would rank differently. But  
17 he's saying there were solvent entities -- he's quoting LBHE  
18 as an example, and then he throws in ECAPS, but those  
19 weren't guaranteed.

20 And he's saying, therefore, that makes it somehow  
21 higher. But then let's just look at 3, just to complete it,  
22 senior to LBHI common stock. So, it's below GUCs --

23 THE COURT: Right.

24 MR. FAIL: -- above common, and we're saying  
25 preferred.

1 THE COURT: Right.

2 MR. FAIL: And so, for example, he has claims in  
3 four trusts, Capital Trusts he's alleging he has claims.

4 THE COURT: Right.

5 MR. FAIL: So, this language, Plan Administrator  
6 believes, means that his Capital Trust 4 or 5, 6 -- 3, 4, 5,  
7 6, they're all the same, because this language is in all of  
8 the prospectuses.

9 THE COURT: Right.

10 MR. FAIL: He's suggesting that there was a  
11 guarantee, an undisclosed -- he has the burden, but he  
12 hasn't met it. He's saying somehow this language gives him  
13 a general unsecured claim because notwithstanding being  
14 junior to all other GUCs, this middle paragraph focusing on  
15 the word parity gives him parity with some other guaranteed  
16 claim, of which I'm not aware, that has been allowed.

17 And that's -- Your Honor, that's his argument. I  
18 can't do it any more justice than that. Again, Mr. Wu, you  
19 know, if I misstated it, please -- it's your argument.

20 MR. WU: Your Honor --

21 THE COURT: Mr. Wu, these securities are junior to  
22 all unsecured claims. There was --

23 MR. WU: (indiscernible)

24 THE COURT: -- a proof of claim filed that  
25 represents your claim, in essence.

1 MR. WU: But that would not fall under the  
2 guarantee, Your Honor --

3 THE COURT: It doesn't matter.

4 MR. WU: -- because --

5 THE COURT: It doesn't matter. The guarantee  
6 only is as good -- the guarantee is only as good as the  
7 underlying claim. The underlying claim was filed. The  
8 underlying claim was allowed. The underlying claim was  
9 subordinated.

10 MR. FAIL: And additionally, Your Honor, as we  
11 pointed out, it was equivalent to a bad boy guarantee. It  
12 wasn't in addition. It said, if LBHI --

13 THE COURT: Right.

14 MR. FAIL: -- paid the trust and the trust didn't  
15 pay it out, LBHI would make --

16 THE COURT: Exactly.

17 MR. FAIL: -- good under the same priority.

18 THE COURT: Right. Exactly.

19 MR. FAIL: Which case has not occurred, as Your  
20 Honor --

21 THE COURT: No.

22 MR. FAIL: -- has pointed out.

23 THE COURT: Mr. Wu, when did you acquire these  
24 securities? When did you acquire your claim?

25 MR. WU: It's on and off, but the current

1 (indiscernible) are between 2013 and I would say 2019. So,  
2 that's (indiscernible) 2011.

3 THE COURT: You've been what since 2011?

4 MR. WU: You know, I bought a few and sold a few  
5 since 2011. But --

6 THE COURT: Did you buy them after the bar date?

7 MR. FAIL: Not these bonds, Your Honor. I think  
8 he's saying --

9 MR. WU: Yes.

10 MR. FAIL: -- he's bought other bonds. The claims  
11 -- Your Honor, I think what he's saying is the claims that  
12 he's holding and the claims that he's asserting now he  
13 bought between 2013 and some in 2019. Separately and apart,  
14 he bought and sold some securities in Lehman Brothers, but  
15 that they're not relevant today since 2011, is what I heard.

16 MR. WU: (indiscernible)

17 MR. FAIL: Subsequent to the bar date, though,  
18 Your Honor.

19 MR. WU: Yes. Those securities were bought after  
20 the bar date. The ones I (indiscernible) are from 2013 to  
21 currently.

22 THE COURT: I mean, that in and of itself  
23 precludes you from raising any of these issues. You can't  
24 come into a case after a bar date has passed when the seller  
25 -- whoever sold you your claim or your security has been

1 subject to a bar date and did or did not act. Then you  
2 don't get to come in, as was done in the case in the motion  
3 that you copied from, and say, well, there was no way I  
4 could have filed a claim at the time because the partnership  
5 was dissolved, et cetera, et cetera.

6 There was a claim. It was subject to a bar date.  
7 It filed or it didn't file. It was in fact here covered by  
8 a proof of claim that was filed on behalf of the beneficial  
9 holders. You then bought the security. You bought it warts  
10 and all. You don't get to resurrect a bar date or get  
11 greater rights than the person who was subject to the bar  
12 date. So, you bought that security as you found it.

13 Even if that were not the case, it's six years  
14 later. You are obviously inspired by this motion, which is  
15 a completely different circumstance. And your reading of  
16 the prospectus is incorrect in terms of your interpretation  
17 of how the subordination and the ranking, if you will, of  
18 the guarantee.

19 MR. WU: Your Honor, may I?

20 THE COURT: Go ahead.

21 MR. WU: You know, within the guarantee, you know,  
22 it was written -- within the prospectus, it was written so  
23 that if the Trustee does not bring the enforcement. In  
24 fact, even the original holders can't bring enforcement of  
25 the guarantee.

1 THE COURT: Mr. Wu --

2 MR. WU: Which is what we --

3 THE COURT: Lehman's a big bankruptcy. There was  
4 a process. There were trillions of dollars of claims. It  
5 was managed for the first five years by Judge Peck. It's  
6 been managed by me since he retired. There were bar debts.  
7 There were deadlines.

8 The concept that somebody who's trading in these  
9 claims can come in in 2019 and get authority to file a new  
10 claim, after having voluntarily traded into the position, is  
11 a non-starter. Even if we get beyond that, there was a bar  
12 order. There was a proof of claim that was filed that  
13 covers the proof of claim that you would file if I were to  
14 give you permission, which I'm not going to.

15 That proof of claim does not entitle anyone to  
16 recover any cash money from Lehman. And that's because the  
17 securities are subordinated below general unsecured claims,  
18 which as of now, the recoveries are about 40 cents on the  
19 dollar.

20 So, for four or five different reasons, you are  
21 not entitled to any relief, and you are not entitled to any  
22 recovery from the Lehman estate. And the same is true with  
23 respect to all of the persons who filed identically for the  
24 joinders.

25 So, I'm going to ask -- it appears on my control

1 panel that someone wants to be heard.

2 MR. GREGORY: Your Honor, this is Ricky Gregory  
3 speaking. I've been working very closely with Mr. Wu on his  
4 motion. And basically, due to the fact that the ECAPS  
5 general partner was taken off the register of companies in  
6 London, did not have a voice from June 2010 --

7 THE COURT: Mr. Gregory, ECAPS --

8 MR. GREGORY: (indiscernible) go ahead.

9 THE COURT: Mr. Gregory --

10 MR. GREGORY: Yes.

11 THE COURT: ECAPS has nothing to do with this.

12 MR. GREGORY: Let me make the link (indiscernible)  
13 for you.

14 THE COURT: ECAPS has --

15 MR. GREGORY: Can I make the link? Can I make my  
16 statement for you very quickly? Basically, LBH PLC has their  
17 subordinate notes for Partnerships 1, 2 and 3 guaranteed by  
18 the Board of Directors' June 9, 2005 global guarantee.

19 A clause in the prospectus for (indiscernible)  
20 states that we are parity with any guarantee for any  
21 affiliate --

22 THE COURT: Okay. Mr. Gregory --

23 MR. GREGORY: Go ahead.

24 THE COURT: Mr. Gregory --

25 MR. GREGORY: I'm listening.

1 THE COURT: Do you have a motion on file?

2 MR. GREGORY: I filed a joinder with Mr. Wu. And  
3 I also stated that I would support what he had in his  
4 joinder.

5 THE COURT: Okay. Are you in --

6 MR. GREGORY: In addition to what I filed in my  
7 joinder.

8 THE COURT: Excuse me, Mr. Gregory. I'm getting  
9 close to cutting you off the line. You're not an attorney.  
10 You don't have a motion on file. This is not friends and  
11 family.

12 MR. GREGORY: I joined Rex, a motion with a  
13 joinder.

14 THE COURT: Finish your statement, Mr. Gregory.

15 MR. GREGORY: LBH PLC subordinate notes for  
16 Partnerships 1, 2 and 3 were guaranteed by the global  
17 agreement that was created by the Board of Directors on June  
18 9, 2005. If you look at the Capital Trust prospectus, it  
19 states that the holding companies, which is LBHI's Capital  
20 Trust securities, or parity with any guarantee issues for  
21 any affiliate, it's a fact that the Capital Trust of the  
22 (indiscernible) securities. It's a fact that the enhanced  
23 Capital Preferred Securities issued by Partnerships 1  
24 through 5 are preferred securities. It's a fact that the  
25 general partner is an affiliate of LBHI.

1           So, in reading the language of the prospectus,  
2           basically the Capital Trust inherits the same guarantee,  
3           that global guarantee, that the ECAPS has. And that creates  
4           a current liability.

5           Now, I didn't become aware of this until Docket  
6           58763 was filed on August 27, 2018. It was a letter from  
7           Mr. Fail that has a copy of the claims for Partnerships 1,  
8           2, 3, 4 and 5, the ECAPS. And it also talks about how the  
9           Lehman Brothers Special Financing guaranteed swap claims for  
10          the (indiscernible) agreement for Partnerships 3, 4 and 5  
11          are also guaranteed by the global agreement, even though the  
12          Capital Trusts do not have a claim with Lehman Brothers  
13          Special Financing, we still have a parity with the guarantee  
14          for Lehman Brothers Special Financing.

15          I also have a Docket 46304 that was filed on  
16          September 13th, 2014, where I mention this when they were  
17          going to make a -- when they were going to pay out the  
18          disputed claims, the Lehman Brothers Commercial Corporation  
19          and Lehman Brothers Special Financing. But I was basing it  
20          in 2014 upon the J.P. Morgan guarantee for their September  
21          agreement.

22          I was not aware back in 2014 that the ECAPS had  
23          their subordinate notes for Partnerships 1, 2 and 3  
24          guaranteed by the global agreement. If you look at the  
25          prospectus for the Capital Trust, if we're not paid anything

1 by LBHI, basically LBHI, according to the prospectus, will  
2 divide up the subordinate debenture into 25-dollar units and  
3 issue them to the holders of the Capital Trust.

4 When you look at the finance -- FINRA --  
5 (indiscernible) Financial Industry Regulatory Authority and  
6 the SEC, any holder who purchased these securities, since  
7 they're still trading, is the holder as if they bought them  
8 from day one. Otherwise, it's fraud for these securities to  
9 be trading if we're not the legitimate holders.

10 If a payment is ever made out, it's going to be  
11 paid out through the Bank of New York Mellon. The Bank of  
12 New York Mellon is going to pay the holders of record, which  
13 is us. The Bank of New York Mellon is the Trustee for the  
14 ECAPS, and it's the Trustee for the Capital Trust securities  
15 as well.

16 THE COURT: Mr. Fail?

17 MR. FAIL: Thank you, Your Honor. There was a lot  
18 in that that, if you'd like, I can try to respond to. At  
19 the beginning of the colloquy attempted to -- it was a  
20 discussion about what have been referred to as ECAPS, as  
21 Your Honor has identified, separate trusts, perhaps some  
22 similarities.

23 Your Honor will recall, and for Mr. Gregory's  
24 benefit, the ECAPS -- certain ECAPS held subordinated debt,  
25 not issued like the (indiscernible) ones here by LBHI, but

1 issued by Lehman Brothers Holdings, PLC, an entity in  
2 Europe. It held (indiscernible) from PLC. It came with a  
3 guarantee, a subordinated guarantee, from LBH PLC. Similar  
4 regulatory purposes to be treated subordinate.

5 Mr. Gregory also referred to, I believe, a 2005  
6 written consent by the Board of Directors of LBHI that have  
7 been referred to from time to time as the corporate  
8 resolution. We've discussed that in numerous pleadings,  
9 Your Honor, and I believe Your Honor referred to it in her  
10 recent decision with SRM.

11 That guarantee has been argued that it guaranteed  
12 the obligations, certain obligations, from PLC. Mr.  
13 Gregory, and perhaps Mr. Wu, are trying to now say somehow  
14 that this written consent gives a non-subordinated guarantee  
15 because HI allegedly guaranteed PLC, which guaranteed  
16 something else.

17 That argument fails by Mr. Gregory's admission  
18 that he found out about the unanimous written consent on  
19 August 2018, eight years after the bankruptcy and seven  
20 years after the bar date.

21 THE COURT: So, what you're referring to is the  
22 law that's clear and that I set forth in the recent SRM  
23 decision, which I wouldn't charge Mr. Gregory or Mr. Wu with  
24 being aware of. But the law is that when there is a general  
25 guarantee, as opposed to a specific guarantee, and corporate

1 resolution is a general guarantee, it's necessary to show  
2 that one acted in reliance -- with knowledge of and in  
3 reliance on the general guarantee. So, by definition,  
4 that's not the case here.

5 THE COURT: It's impossible for Mr. Wu, who didn't  
6 purchase it pre-petition. It was known to be impossible by  
7 Mr. Gregory's admission. And certainly, the prospectus  
8 which -- we've covered this in prior objections, perhaps  
9 before Your Honor's taking over the case, or perhaps after -  
10 - the prospectus and documents make it very clear that the  
11 only guarantee issued was the limited one, the only  
12 guaranteed issued here that's relevant. It's the very  
13 limited, very subordinated guarantee of LBHI.

14 So, I think I was able to explain and put together  
15 -- there were other discussions of Mr. Gregory's prior  
16 filings. He referred to two different things, I think,  
17 including a long time ago when we made a -- we did an  
18 advance -- to advance money for distributions, I think we  
19 did a substitution, Your Honor, with reserves that were held  
20 for the J.P. Morgan litigation. I mean, Mr. Gregory filed a  
21 statement then that was irrelevant, and I don't think it's  
22 relevant here.

23 So, I'm happy to answer any further questions or  
24 respond. But nothing in the joinders, nothing in the  
25 motion, nothing articulated today by the movant or joinder

1 change the Debtors' position -- the Plan Administrator's  
2 position, Your Honor.

3 THE COURT: All right. Thank you. All right,  
4 there were a number of other documents that were filed by  
5 Julie (indiscernible), Dan (indiscernible), (indiscernible)  
6 Ms. Elizabeth Harrison. There were also a couple of  
7 objections that were filed to the timing of the early  
8 distribution.

9 MR. FAIL: Would you like me to address those --

10 THE COURT: Well, let me take a shot first. Mr.  
11 Wu, you filed at 59772 an objection to the timing of the  
12 early distribution. I don't know what you're talking about.  
13 There's not an early distribution.

14 MR. FAIL: Well, Your Honor, maybe just -- it has  
15 not been presented yet. If Your Honor -- can I...?

16 THE COURT: Sure.

17 MR. FAIL: Thank you very much. So, on June 7th,  
18 so earlier this month, at Docket 59756, it is not related to  
19 the motion before Your Honor today --

20 THE COURT: Right.

21 MR. FAIL: -- so we don't expect that you would be  
22 aware.

23 THE COURT: Yeah.

24 MR. FAIL: We filed a motion seeking permission to  
25 do a supplemental distribution.

1 THE COURT: Yes.

2 MR. FAIL: Okay.

3 THE COURT: Yeah.

4 MR. FAIL: And so, what it requested was to set a  
5 record date of, I believe --

6 THE COURT: Uh huh.

7 MR. FAIL: -- okay -- the 17th. And so, what  
8 these parties are objecting to is the fact that they did not  
9 have an allowed claim. So, if Your Honor were to grant  
10 their motion, then they would be allowed to have a claim,  
11 but it wouldn't receive a distribution.

12 The Plan Administrator's position, if Your Honor  
13 would address it while the parties are on the phone for  
14 judicial ease, is to the extent that Your Honor denies the  
15 motion, we request that Your Honor overrule these objections  
16 such that we could present, subject to any other new novel  
17 arguments made -- that we would be able to present without  
18 an additional hearing on the subsequent motion.

19 The sole basis for the objection to LBHI and other  
20 Debtors making a distribution is that these parties on the  
21 telephone today wouldn't be included if Your Honor granted  
22 them permission to have claims. And again, I'm happy to  
23 answer any further questions.

24 THE COURT: Yeah, there was just -- there was some  
25 sense -- and there's been such a flurry of documents filed,

1 all that basically say the same thing. I can't put my  
2 finger on it now, but there was some suggestion in one of  
3 the documents that this was part of some grand scheme, that  
4 the record date was set in connection with the hearing dated  
5 this motion, and that it was designed to cut off the rights  
6 of these persons. That's a pure fabrication.

7 MR. FAIL: We think so, Your Honor.

8 THE COURT: So, you know, again, there's a --  
9 something that emerges from these pleadings that I find very  
10 troubling, which is to say that folks seem to be reinforcing  
11 each other's views of this situation in ways that are just  
12 not tethered to the facts and the operative plan documents.

13 Mr. Wu, do you have anything else you want to add?  
14 We have to wrap this up.

15 MR. WU: I do not, Your Honor.

16 THE COURT: I'm sorry. Who was just speaking?

17 MR. WU: I do not, Your Honor.

18 THE COURT: Okay. That was you, Mr. Wu?

19 MR. WU: (indiscernible)

20 MR. GREGORY: Your Honor?

21 THE COURT: Okay. Is there anyone else on the  
22 phone who'd like to be heard?

23 MR. GREGORY: Yes. I would like to be heard, Your  
24 Honor.

25 THE COURT: Okay. Go ahead, Mr. Gregory. The SEC

1 has ruled whereby if you purchase these securities, you own  
2 them as though you own them from day one, and you have  
3 standing. Well, it should be considered fraud for these  
4 securities to still trade if the prospectus cannot be  
5 honored --

6 THE COURT: Well, Mr. Gregory --

7 MR. GREGORY: -- according to the parity rules --

8 THE COURT: I'm not going to --

9 MR. GREGORY: Go ahead.

10 THE COURT: Mr. Gregory, I'm going to engage you  
11 in a detailed discussion of what the SEC has or has not  
12 said. I will tell you that as far as I'm aware people trade  
13 in all sorts of securities that range from worthless to  
14 entirely worthless to worth a few pennies to let's see who  
15 you sell it to for another penny.

16 This is a bankruptcy case that was conducted  
17 pursuant to the rules of this Court, Federal Rules of Civil  
18 Procedure as adopted and incorporated into the bankruptcy  
19 rules according to the Bankruptcy Code under the glare and  
20 spotlight for years and years and years.

21 It resulted in a plan of reorganization. The plan  
22 of reorganization contemplated a bar date and an orderly  
23 process for the consideration of claims. That's what has  
24 occurred here.

25 In fact, this case is coming to its conclusion.

1 The law and the orders of this Court need to be upheld and  
2 given their plain and clear meaning. It's not an endless  
3 round of people diving into these very complicated documents  
4 and coming up with new and novel theories. If you bought a  
5 security based on your belief and understanding of what the  
6 security entitled you to, that's your business.

7 Lehman Brothers is not in the business now and has  
8 not in the business since September of 2008, of minting  
9 securities. Mr. Fail, am I wrong?

10 MR. FAIL: No, Your Honor.

11 THE COURT: Okay. Claims trade, securities trade  
12 -- it's not within this Court's control and, frankly, it's  
13 not within the Lehman Brother's plan administrator's  
14 control.

15 Once again I will say, and this constitutes a  
16 ruling, that the plan administrator -- and I don't often say  
17 this, and Mr. Fail, you've been around a lot, the plan  
18 administrator prevails sometimes, sometimes the plan  
19 administrator spectacularly doesn't prevail. As I  
20 understand it there's an argument in the Second Circuit next  
21 week in a billion dollar matter in which this Court ruled  
22 against the plan administrator.

23 So, for the benefit of the folks on the phone I  
24 want to make it perfectly clear. Plan administrator  
25 prevails sometimes and the plan administrator doesn't

1 prevail sometimes. There is no Lehman. There is only a  
2 plan administrator collecting assets and liquidating claims  
3 and sending out distributions for the benefit of creditors.

4 This exercise has cost creditors money. If these  
5 pleadings had been filed by lawyers there would be a  
6 reasonable basis for me to entertain a motion for sanctions.  
7 Under Rule 9011 of the Federal Bankruptcy Rules, it's  
8 important, it's obligated that you make diligent inquiry  
9 into the facts of the law governing any pleading you file in  
10 the Court.

11 Mr. Fail has repeated today many of the arguments  
12 that were laid out in the plan administrator's brief. I'll  
13 repeat them again for your benefit.

14 This is not like the situation in the pleading  
15 from which Mr. Wu, you copied your objection. In this case  
16 in fact, the indenture trustee for these securities filed a  
17 proof of claim. The beneficial interests and the individual  
18 holders of the securities were represented by \$1 billion in  
19 allowed claims against the estate. So, that's one reason  
20 why Mr. Wu, you cannot prevail.

21 Secondly, as has been made clear, you acquired  
22 these positions after the bar date, so that places you in a  
23 whole separate category.

24 Under the test for filing a new proof of claim,  
25 I've heard nothing today that would provide a basis for me

1 to give you leave to file a new claim. There are no new  
2 facts. The simple statement that there would not be  
3 prejudice has been undermined by, among other things, the  
4 many joinders that have been filed to your motion indicating  
5 that there are folks out there who should -- the relief  
6 requested -- I grant -- your request would be granted by the  
7 Court would start filing claims and the notional amount of  
8 these securities is very large. Who knows how many claims  
9 there would be.

10 But perhaps most importantly, your reading of the  
11 prospectuses is flawed. Your reading of the prospectuses is  
12 flawed. Under any scenario any claim that you have would be  
13 subordinated to general unsecured claims and is not entitled  
14 to a distribution under the plan.

15 So, for those reasons, and as more fully explained  
16 in the objection filed by the plan administrator, and I  
17 don't often say this because I don't often agree with  
18 everything the plan administrator says, I agree with all of  
19 the points made in the plan administrator's objection.

20 So, for all the reasons I'm going to deny Mr. Wu's  
21 motion and to the extent that the joinders believe or are  
22 taking the position that their joinders constitute separate  
23 motions, those joinders/motions are also denied.

24 The objection with respect to the timing of the  
25 so-called record date in early distribution, that's been

1 raised by Mr. Wu and by one or more of the joining parties,  
2 that too is denied.

3 So, Mr. Fail, I'm going to ask that you prepare an  
4 order. As a courtesy if you would circulate it to Mr. Wu  
5 and to the other joining parties and then send it to  
6 chambers. We'll enter the order. The order should reflect  
7 my ruling and indicate that for the reasons more fully  
8 described on the record of the hearing.

9 Mr. Wu, for your benefit and the benefit of the  
10 other parties who are appearing here without lawyers, once  
11 that order is entered that order can form the basis of the  
12 exercise of any appellate rights that you wish to exercise.

13 Transcript of these proceedings can be obtained  
14 should you wish to get a copy. Do you have any questions,  
15 Mr. Wu? Okay. All right, I think that's all we have. Mr.  
16 Fail, is there anything else I need to think about today?

17 MR. FAIL: No, Your Honor. Thank you, again, and  
18 thank your chambers for the time and attention that you've  
19 given to the matter.

20 THE COURT: Okay. All right, thank you folks.  
21 Enjoy the rest of your day.

22  
23 (Whereupon these proceedings were concluded at  
24 12:09 PM)  
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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: June 21, 2019

[& - adler]

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